

FACTSHEET

TITLE: **MISCELLANEOUS NO. 03009**, requested by the Director of Planning, to amend Title 26 of the Lincoln Municipal Code (the Land Subdivision Ordinance) by amending §§ 26.19.020 and 26.31.010 to modify the procedure for granting modifications of subdivision requirements and providing an appeal process therefor; and repealing § 26.31.010 as hitherto existing.

STAFF RECOMMENDATION: Approval.

ASSOCIATED REQUESTS: Miscellaneous No. 03010 (03R-241)

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 08/20/03
Administrative Action: 08/20/03

RECOMMENDATION: Approval (9-0: Krieser, Larson, Duvall, Carlson, Bills-Strand, Taylor, Marvin, Steward and Schwinn voting 'yes').

FINDINGS OF FACT:

1. This proposed amendment to the Land Subdivision Ordinance is a follow-up adjustment to the procedural amendments recently adopted by the City Council with the application fee increases.
2. The proposed amendments are set forth on p.5-9.
3. The staff recommendation to approve this text amendment to the Land Subdivision Ordinance is based upon the "Analysis" as set forth on p.2-3, concluding that the Planning Commission should have the authority to approve modifications to the subdivision regulations that are found to meet the intent of the code and which are supported by City Staff. The proposed new language was approved by the Planning Commission on August 6, 2003, and by the City Council on August 18, 2003, and is simply being relocated to more appropriate sections of the code at the request of the Law Department. The amendment to permit the Planning Director (rather than the Planning Commission Chair) to sign the approval certificate for final plats is related to another amendment approved by the Planning Commission on August 6, 2003, and adopted by the City Council on August 18, 2003, that gave the Planning Director authority to approve final plats.
4. There was no testimony at the public hearing before the Planning Commission on August 20, 2003.
5. On August 20, 2003, the Planning Commission agreed with the staff recommendation and voted 9-0 to recommend approval.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: September 2, 2003

REVIEWED BY: _____

DATE: September 2, 2003

REFERENCE NUMBER: FS\CC\2003\MISC.03009

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for August 20, 2003 PLANNING COMMISSION MEETING

P.A.S.: Miscellaneous #03009 & 03010

PROPOSAL: To amend the language in the Subdivision Ordinance and the Design Standards in order to allow the Planning Commission to approve waiver requests, and to allow the Planning Director to sign the approval certificate on final plats.

CONCLUSION: The Planning Commission should have the authority to approve modifications to the regulations and standards that are found to meet the intent of the codes and has City Staff support. The proposed new language was approved by the Planning Commission at their August 6, 2003 meeting and is simply being relocated to more appropriate sections of the code at the request of the Law Department.

The amendment to permit the Planning Director to sign the approval certificate is related to another amendment approved by the Planning Commission on August 6, 2003 that gave the Planning Director authority to approve final plats.

<u>RECOMMENDATION:</u>

Approval

DESCRIPTION:

Section 26.19.020 and 26.31.010 of the Land Subdivision Ord of Title 26 of the LMC
Title 1, Chapter 1.00, Sections 2.1 and 2.2 of the City of Lincoln Design Standards

ANALYSIS:

1. There are situations where waivers and modifications to the rules and regulations are justified and the City staff finds the waivers meet the intent of the rules and regulations. In those situations one public hearing by the Planning Commission should be sufficient for the public to voice their concerns. The amendment gives the applicant or any aggrieved person the opportunity to appeal the Planning Commission's decision to the City Council. In those situations where the Planning Commission approves the waiver but the City staff finds that it does not meet the intent of the regulations, then that request should be considered by the City Council.
2. Waiver requests will still require a public hearing with this amendment, but the time period is reduced in most cases.

3. The amendment to 26.19.020 was intended to be included in the packet for Miscellaneous #03005 involving procedures and fees, which the Planning Commission approved on August 6, 2003. The amendment authorizes the Planning Director to sign the approval certificate.

Attached is the proposed language in legislative form.

Prepared by:

Ray Hill Planner

DATE: August 7, 2003

APPLICANT:
Director of Planning Marvin S. Krout

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**MISCELLANEOUS NO. 03009,
TEXT AMENDMENT TO TITLE 26
and
MISCELLANEOUS NO. 03010,
TEXT AMENDMENT TO THE DESIGN STANDARDS**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 20, 2003

Members present: Krieser, Larson, Duvall, Carlson, Bills-Strand, Taylor, Marvin, Steward and Schwinn.

Staff recommendation: Approval.

Ex Parte Communications: None.

Proponents

Brian Will of Planning staff explained that this is actually connected with the applications reviewed at the last meeting on the fee increase and processing procedures. These are clean-up adjustments.

There was no testimony in opposition.

MISCELLANEOUS NO. 03009

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

August 20, 2003

Bills-Strand moved approval, seconded by Larson and carried 9-0: Krieser, Larson, Duvall, Carlson, Bills-Strand, Taylor, Marvin, Steward and Schwinn voting 'yes'.

MISCELLANEOUS NO. 03010

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

August 20, 2003

Bills-Strand moved approval, seconded by Schwinn and carried 9-0: Krieser, Larson, Duvall, Carlson, Bills-Strand, Taylor, Marvin, Steward and Schwinn voting 'yes'.

26.19.020 Certificates and Acknowledgments on Final Plat.

The final plat shall show the following:

- (a) Owners' acknowledgment and offer of dedication, if any;
- (b) Certificate of the surveyor;
- (c) Certificate of approval by the Planning ~~Commission~~ Director and acceptance of the offer of dedication;
- (d) All affidavits, certificates, acknowledgments, endorsements, dedications, and notarial seals as are required by law and the provisions of this title, shall be as approved by the City Attorney.

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Introduce:

ORDINANCE NO. _____

1 AN ORDINANCE amending Section 26.31.010 of the Lincoln Municipal Code
2 to modify the procedure for granting modifications of subdivision requirements and providing
3 an appeal process therefor; and repealing Section 26.31.010 of the Lincoln Municipal Code
4 as hitherto existing.

5 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

6 Section 1. That Section 26.31.010 of the Lincoln Municipal Code be amended
7 to read as follows:

8 **26.31.010 Modification of Requirements.**

9 Whenever ~~the tract to be subdivided~~ a lot, tract, or parcel of land is of such unusual
10 size or shape or is surrounded by such development or unusual condition that the strict
11 application of the requirements contained in these regulations would result in actual
12 difficulties or substantial hardship or injustice, the ~~Council~~ subdivider may request a
13 modification of such requirements. Such request shall be filed with the Planning Director and
14 shall set forth the specific modification requested and all supporting reasons and
15 documentation as to why the modification should be granted, how the public welfare will be
16 preserved, and why the modification will not detract from the intent and spirit of these
17 regulations. The Director shall distribute copies of the requested modification and the
18 subdivider's statement and accompanying data to other City departments and governmental
19 agencies who are directly concerned with the proposed modification. Each department or
20 governmental agency which is directly concerned with the proposed modification shall, within

1 fifteen days from receipt of a copy of the requested modification, file with the Planning
2 Director notice of its approval of the requested modification or a report stating why the
3 modification should not be granted. Within thirty days from the filing of the request for
4 modification, the Planning Director shall notify the subdivider in writing of the recommended
5 approval or disapproval of the request. The request for modification will then be scheduled
6 on the Planning Commission agenda for public hearing and action as provided below.

7 (a) (1) If the requested modification is recommended for approval by the
8 Planning Director, the Planning Commission, after holding at least one public hearing on the
9 requested modification, may vary or modify such requirements so that the subdivider may
10 develop the property land in a reasonable manner, but so that at the same time, the public
11 welfare and interests of the City and surrounding area are protected and the general intent and
12 spirit of these regulations are preserved.

13 (2) Any aggrieved person may appeal any action of the Planning
14 Commission to the City Council by filing a notice of appeal with the City Clerk within fourteen
15 days following the action of the Planning Commission. Upon receipt of the appeal by the City
16 Council, the Council shall hold a public hearing thereon within thirty days from the date of
17 appeal. Notice of the public hearing shall be given as provided in Section 26.11.036. The City
18 Council may, after public hearing in conformity with the provisions of this title, reverse or
19 affirm, wholly or partially, or may modify the action of the Planning Commission appealed
20 from.

21 (b) If the Planning Director recommends denial of the requested modification, the
22 Planning Commission shall hold a public hearing on such request and make a report and

1 recommendation to the City Council regarding whether the modification should be granted
2 or denied and, if approved, how the public welfare will be preserved and why the
3 modification, if granted, will not detract from the intent and spirit of these regulations. The
4 findings of the Commission after public hearing shall be submitted to the City Clerk within
5 seven days from the action by the Planning Commission. After submittal of the findings of the
6 Planning Commission to the City Clerk, the City Clerk shall cause the requested modification
7 to be placed on the agenda of the City Council for approval by the City Council by resolution.
8 The City Council, after holding at least one public hearing on the requested modification, may
9 modify such requirements so that the subdivider may develop the land in a reasonable
10 manner, but so that at the same time, the public welfare and interests of the City and
11 surrounding area are protected and the general intent and spirit of these regulations are
12 preserved.

13 ~~Any such proposed modification of the requirements contained in these regulations~~
14 ~~shall first be submitted to the Planning Commission for its recommendations and report. The~~
15 ~~Planning Commission shall hold at least one public hearing before submitting its recommen-~~
16 ~~dations and report. Notice of the Commission's hearing~~ public hearings required under this
17 section shall be provided pursuant to Section 26.11.036 of this title. The minimum
18 improvements set forth in Chapter 26.27 shall be required unless specifically and individually
19 waived by the Planning Commission or City Council as provided above.

20 Section 2. That Section 26.31.010 of the Lincoln Municipal Code as hitherto
21 existing be and the same is hereby repealed.

1 Section 3. That this ordinance shall take effect and be in force from and after

2 its passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ____ day of _____, 2003:

Mayor